

By: Ellis

S.B. No. 163

A BILL TO BE ENTITLED

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AN ACT

relating to a consumer's option to prevent the sale of the consumer's financial information by a financial institution; providing for civil liability.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle Z, Title 3, Finance Code, is amended by adding Chapter 279 to read as follows:

CHAPTER 279. SALE OF CONSUMER'S FINANCIAL INFORMATION

Sec. 279.001. DEFINITIONS. In this chapter:

(1) "Affiliate" with respect to a person means another person who controls, is controlled by, or is under common control with the person. In this subdivision, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) "Consumer" means an individual resident of this state, or the legal representative of an individual resident of this state, who obtains a financial product or service for personal, family, or household purposes.

(3) "Financial information" means information, other than information that a financial institution has a reasonable basis to believe is lawfully made available to the general public, obtained by a financial institution in connection with providing a

1 financial product or service to a consumer, including:

2 (A) information provided on an application for a
3 loan, credit card, or other financial product or service;

4 (B) account balance information;

5 (C) payment or overdraft history;

6 (D) credit or debit purchase information;

7 (E) information obtained in connection with
8 collecting on or servicing a loan; or

9 (F) information from a consumer report.

10 (4) "Financial institution" has the meaning assigned
11 by Section 201.101.

12 Sec. 279.002. APPLICABILITY. This chapter does not apply
13 to:

14 (1) the sale of information that is incidental to a
15 transaction having a primary purpose other than the sale of
16 information, including the sale of a loan or of a business; or

17 (2) the disclosure of information to:

18 (A) a private collection agency for the purpose
19 of collecting a delinquent payment;

20 (B) a federal, state, or local governmental
21 entity for a legitimate governmental purpose; or

22 (C) a private vendor as necessary to allow the
23 vendor to perform a service for the governmental entity under a
24 contract with the governmental entity.

25 Sec. 279.003. AUTHORIZATION REQUIRED FOR SALE OF FINANCIAL
26 INFORMATION. (a) A financial institution may sell a consumer's
27 financial information to another person only if the consumer

1 authorizes the sale of the information as provided by this chapter.

2 (b) A financial institution may sell a consumer's financial
3 information without the consumer's authorization to an affiliate of
4 the financial institution.

5 (c) A financial institution may sell a consumer's financial
6 information to another financial institution for the purpose of
7 marketing the financial institution's products or services offered
8 under a joint agreement between the institutions without the
9 authorization required by Subsection (a) if the selling financial
10 institution is required to notify the consumer of the disclosure of
11 the information under the Gramm-Leach-Bliley Act (15 U.S.C. Section
12 6802(b)(2)).

13 (d) An affiliate or financial institution that receives a
14 consumer's financial information under Subsection (b) or (c) may
15 sell the information to a person who is not an affiliate of that
16 affiliate or financial institution only if the consumer authorizes
17 that affiliate or financial institution to sell the information as
18 provided by this chapter.

19 Sec. 279.004. PRIVACY NOTICE AND AUTHORIZATION FOR SALE.

20 (a) A financial institution shall provide a written privacy notice
21 to:

22 (1) each consumer who is transacting business with or
23 using the services of the financial institution; and

24 (2) a consumer who begins a relationship with the
25 financial institution at the time the financial institution first
26 communicates in writing or in person with the consumer.

27 (b) The privacy notice shall:

1 (1) be in at least 10-point type that is boldfaced,
2 capitalized, or underlined or otherwise conspicuously set out from
3 the surrounding written material;

4 (2) inform the consumer that the financial institution
5 may not sell the consumer's financial information if the consumer
6 does not authorize the sale of the information; and

7 (3) provide a form that the consumer may sign and
8 return to the financial institution to indicate that the consumer
9 authorizes the financial institution to sell the consumer's
10 financial information.

11 (c) A financial institution may sell a consumer's financial
12 information only after the financial institution receives the form
13 authorizing the sale of the information.

14 (d) A financial institution that does not sell a consumer's
15 financial information to a person other than an affiliate of the
16 financial institution is not required to provide a privacy notice
17 to a consumer under this section. A financial institution that does
18 not sell a consumer's financial information to a person other than
19 another financial institution under a joint agreement as provided
20 by Section 279.003(c) is not required to provide a privacy notice
21 under this section but must provide any similar notice required by
22 other law.

23 Sec. 279.005. WITHDRAWAL OF AUTHORIZATION FOR SALE OF
24 INFORMATION. A consumer who has authorized the sale of financial
25 information under Section 279.004 may at any time withdraw the
26 authorization in writing. The withdrawal of an authorization is
27 effective on the date the financial institution receives the

1 withdrawal.

2 Sec. 279.006. JOINT RELATIONSHIPS. (a) If two or more
3 consumers jointly obtain a financial product or service, the
4 financial institution may provide a privacy notice to one or all of
5 the consumers.

6 (b) If a consumer authorizes the sale of the consumer's
7 financial information as provided by this chapter, the financial
8 institution may sell any financial information relating to that
9 consumer, including information relating to a jointly obtained
10 product or service.

11 (c) If a consumer who does not authorize the sale of the
12 consumer's financial information as required by this chapter
13 jointly obtains a financial product or service with another
14 consumer who has authorized the sale, the financial institution may
15 sell only the financial information of the first consumer that
16 relates to the jointly obtained product or service.

17 Sec. 279.007. FINANCIAL INSTITUTION MAY NOT REQUIRE
18 AUTHORIZATION. A financial institution may not require a
19 consumer's authorization for the sale of the consumer's financial
20 information as a condition of doing business with the financial
21 institution. A consent or waiver obtained from a consumer as a
22 condition of doing business with a financial institution is not
23 valid.

24 Sec. 279.008. LIABILITY. A person is liable to a consumer
25 for an intentional violation of this chapter in an amount equal to
26 the greater of:

27 (1) \$1,000; or

1 (2) actual damages caused by the sale of the financial
2 information.

3 SECTION 2. (a) A financial institution shall provide each
4 person who is transacting business with or using the services of the
5 financial institution on the effective date of this Act a privacy
6 notice as required by Section 279.004, Finance Code, as added by
7 this Act, not later than the 60th day after the effective date of
8 this Act.

9 (b) A financial institution may not sell a consumer's
10 financial information after the 180th day after the effective date
11 of this Act unless authorized by the consumer under Chapter 279,
12 Finance Code, as added by this Act. For purposes of this
13 subsection, a sale occurs on the earlier of the date an enforceable
14 agreement to sell information is made or the date the information is
15 sold.

16 SECTION 3. This Act takes effect immediately if it receives
17 a vote of two-thirds of all the members elected to each house, as
18 provided by Section 39, Article III, Texas Constitution. If this
19 Act does not receive the vote necessary for immediate effect, this
20 Act takes effect September 1, 2009.